

REMARKS

The present Response is intended to be fully responsive to the rejections raised in the outstanding Office Action, and is believed to place the application in condition for allowance. Further, the Applicant does not acquiesce to any portion of the Office Action not particularly addressed. Favorable reconsideration and allowance of the application is respectfully requested.

As of the mailing of the outstanding Office Action, Claims 35, 36, 38-43, 45-47, 49 and 51-61 were pending in the application. Based on the outstanding Office Action, the status of the application may be summarized as follows:

- 1) Claims 35, 36, 38, 43, 45-47, 49 and 54-61 stand rejected under 35 U.S.C. §103(a) based on the teachings of U.S. Patent No. 5,647,874 to Hayhurst (hereinafter “Hayhurst”) in view of U.S. Patent No. 6,972,027 to Fallin et al. (hereinafter “Fallin”).
- 2) Claims 39-41 and 51-53 stand rejected under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of U.S. Patent Publication No. 2005/0113937 to Binette et al. (hereinafter “Binette”).
- 3) Claim 42 stands rejected under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of U.S. Patent Publication No. 2004/0267314 to Wolf et al. (hereinafter “Wolf”).

Substance of Interview Pursuant to MPEP 713.04

This Substance of Interview is being submitted in consideration of the telephonic interview conducted on January 3, 2012, for the above-referenced application.

In the telephonic interview conducted on January 3, 2012, between Examiner Joshua Levine, Mr. Levine’s SPE David Isabella and the Applicant’s undersigned attorney, the pending Office Action was discussed. Discussion topics were outlined and transmitted via email to “joshua.levine@uspto.gov” before the interview on December 20, 2011 (attached hereto as Exhibit A). However, Examiner Levine indicated at the start of the interview that he did not receive the outline. As such, the Applicant’s undersigned attorney did not strictly rely on the outline, but rather used the outline as a general guide for the interview. The outline was relied upon, however, in a discussion regarding potential claim amendments, specifically a discussion

regarding the applicability of the potential claim amendments enumerated as “A” through “G” listed under the heading entitled “Topic 5.”

At the outset of the interview, the Applicant’s undersigned attorney discussed an issue with a lack of clarity of the pending Office Action in regards the rejections of part of the claim amendments introduced in Applicant’s February 28, 2011 response. Specifically, said claim amendments changed the description of the connection between the distal end of the flexible member and the cartilage replacement material at an attachment point from “configured to attach” to “mechanically locked.” The Applicant’s undersigned attorney noted that the current Office Action fails to address these claim amendments. The Applicant’s undersigned attorney further noted that when the Office Action discusses the rejections to the claims that included the amendment (Page 3), the rejections state that **Hayhurst** discloses, *inter alia*, “said flexible member **being configured to attach** to said section of replacement material at an attachment point 68 (figure 14...”). [Emphasis added]. The Applicant’s undersigned attorney also noted that in regards to the rejections of dependent claims which further define the “mechanically locked” claim language, the Office Action cites **Fallin** for teaching or suggesting the claims. The Applicant’s undersigned attorney argued that, as a result, it is unclear whether the “mechanically locked” amendment was considered, and if it was considered, it is unclear whether Hayhurst or Fallin is cited against the claim language. The Applicant’s undersigned attorney expressed the Applicant’s position that the Office Action thereby fails to fully consider the claim amendments of 2/28/2011 and is improper at least for being incomplete as to all matters, as is required by 37 C.F.R. § 1.104(b) and MPEP § 707.07, and arbitrary and capricious and invalid under the Administrative Procedure Act (5 U.S.C. § 706).

As a result, the Applicant’s undersigned attorney requested that the finality be of the pending Office Action be withdrawn because the outstanding Office Action is incomplete under 37 C.F.R. § 1.104(b) and does not meet the requirements of MPEP § 707.07. Examiner Levine responded to the request by stating that the “mechanically locked” claim amendments were considered, and that the rejections to the “mechanically locked” limitations can be clarified in an Interview Summary following the interview. Examiner Levine also expressed that the Office was not willing to withdraw the finality of the pending Office Action at this time. As a result, an agreement between Examiner Levine and the Applicant’s undersigned attorney was not reached regarding withdrawal of the finality of the pending Office Action.

The Applicant's undersigned attorney also discussed the background of the invention, the background of the cited art, and the differences between the objects of the invention and the devices of the prior art. As part of this discussion, the Applicant's undersigned attorney noted that the aspects and configuration of the claimed surgical device can be seen from Figs. 44 and 45 of the application, and that such aspects and configuration are not taught or suggested by the cited prior art. Examiner Levine acknowledged that the surgical device shown in at least Figs. 44 and 45 includes novel and non-obvious features over the cited art, and that a claim directed to such a surgical device may be patentable over the cited art – depending upon the specific features/configuration included therein and the claim language used.

To that end, amendments to the independent claims were also discussed. More specifically, the Applicant's undersigned attorney and Examiner Levine discussed the concepts disclosed in the potential claim amendments enumerated as "A" through "G" listed under the heading entitled "Topic 5" of the discussion topic outline (attached). While some of these potential claim amendment options were discussed but not agreed upon, the Applicant's undersigned attorney and Examiner Levine reached an agreement that claim amendments to the independent claims introducing at least one of the following limitations would result in a surgical device not taught or suggested by the cited prior art:

- 1) The anchor being positioned proximate a first side of the cartilage replacement material, and the sliding/stopping member being positioned proximate a second side of the cartilage replacement material that substantially opposes the first side of the cartilage replacement material.
- 2) The flexible member is threaded through the anchor at least twice to form at least two pulley mechanisms, each of the at least two pulley mechanisms include two member portions of the flexible member extending from the anchor, and at least one member portion of one pulley mechanism traverses the cartilage replacement material and both member portions of the other pulley mechanism traverse the cartilage replacement material.
- 3) The proximal end of the flexible member at least in part forms the sliding/stopping device, and the portion of the flexible member extending between the distal end and the sliding/stopping device traverses through the section of cartilage replacement material at least three times.
- 4) The total length of the flexible member extending between the sliding/stopping device and the attachment point remains the same both before and after the section of cartilage replacement material is positioned within the defect site (upon further consideration of potential meanings of the terms "sliding device" and "flexible member").

Accordingly, the Applicants have amended independent Claims 35 and 46, and introduced new independent Claim 76, to include the concepts enumerated as numbers “3”, “4” and “1” above, respectively. Also, the concept enumerated as “2” above is presented in dependent Claims 63, 71 and 78, which depend upon independent Claims 35, 46 and 76, respectively. As discussed further below, these concepts are not taught or suggested by the cited prior art, and therefore the Applicant respectfully submits that the rejections raised in the outstanding Office Action have been overcome, and the application is in a condition for allowance.

The Applicant wishes to acknowledge with appreciation Examiner Levine’s and SPE Isabella’s willingness to participate in this telephonic interview.

Claim Amendments

Applicant has amended the pending claims to more clearly recite the presently claimed subject matter and to introduce new claims. Claims 36, 45, 53, 59 and 61 have been canceled, new Claims 62-83 have been added, and Claims 35, 46, 52, 58 and 60 have been amended herein. In particular, independent Claim 35 has been amended to recite that the proximal end of the flexible member at least in part forms the sliding device, and the portion of the flexible member extending between the distal end of the flexible member and the sliding device traverses through the section of cartilage replacement material at least three times. Independent Claim 46 has been amended to recite that the total length of the flexible member extending between the stopping device and the attachment point remains the same both before and after the section of cartilage replacement material is positioned within the defect site. Further, new independent Claim 76 has been added and is substantially similar to independent Claim 1 before the above-noted amendment, except that independent Claim 76 recites that the biocompatible anchor is positioned proximate a first side of the section of cartilage replacement material, and a sliding device about the flexible member formed at least in part by the proximal end of the flexible member is positioned proximate a second side of the section of cartilage replacement material that substantially opposes the first side of the section.

Upon entry of the claim amendments submitted herewith, Claims 35, 38-43, 46, 47, 49, 51, 52, 54-58, 60 and 62-83 will be pending in the application (40 total claims, 3 claims of which are presented in independent form). Applicant respectfully submits that no new matter has been added to the application by way of the proposed claim amendments presented herein, as support

for the amendments can be found throughout the as-filed application. For at least the foregoing reasons, Applicant respectfully submits that the proposed claim amendments do not raise issues of new matter. Prompt entry thereof is respectfully requested.

Rejections Under 35 U.S.C. §103(a) in View of Hayhurst in View of Fallin

Claims 35, 36, 38, 43, 45-47, 49 and 54-61 stand rejected under 35 U.S.C. §103(a) in view of the teachings of Hayhurst in view of Fallin. To establish a *prima facie* case of obviousness, one of the basic criteria that must be met is that the prior art reference (or references when combined) must teach or suggest all the claimed limitations. *In re Vaeck*, 947 F. 2d 488 (Fed. Cir. 1991). Claims 36, 45, 59 and 61 are canceled herein, and Claims 38, 43, 47, 49, 54-58 and 61 depend, either directly or indirectly, upon independent Claims 35 or 46. Applicant respectfully asserts that a *prima facie* case of obviousness has not been established at least to independent Claims 35 and 46, as amended, at least because Hayhurst and Fallin fail to teach or suggest all the claimed limitations recited therein.

Independent Claims 35 and 46 recite, *inter alia*, a surgical device including: (1) a biocompatible anchor shaped to sit within tissue at the defect site and retain a section of cartilage replacement material in the defect site; (2) a biocompatible flexible member traversing through said section of cartilage replacement material multiple times, a distal end of said flexible member mechanically locked to said section of cartilage replacement material at an attachment point and a proximal end of said flexible member threaded through said anchor at least twice to form at least two pulley mechanisms; and (3) a sliding/stopping device about said flexible member.

The Office acknowledges that Hayhurst fails to teach or suggest that the “flexible member is threaded twice through the anchor to form at least two pulley mechanisms.” Office Action, Page 3. To cure this deficiency of Hayhurst, the Office relies on the teachings of Fallin. The Office also relies on Fallin for teaching or suggesting “a sliding device about said flexible member.” Specifically, the Office Action states that Fallin shows “an anchor 56 (figure 7) with a flexible member 60 (figure 7) threaded through said anchor at least twice to form at least two pulley mechanisms and a slidable device 88 about said flexible member as shown in figure 7.” The Office Action goes on to state that “[t]he opposite end 84 (figure 7) of said flexible member is looped around said flexible member 60 to form a sliding device 88 (figure 7) for adjusting said distance between attachment point 58 (figure 7) and said anchor” and that “the sliding device is a slipknot fashioned around flexible member 60 (figure 7).” Office Action, Page 3.

However, the Applicant respectfully submits that Fallin, along with Hayhurst, fail to teach or suggest the particular features and configuration of the surgical device recited in Claims 35 and 46, as amended, for at least the reasons presented below.

Independent Claim 35

Independent Claim 35, as amended, recites a surgical device including, *inter alia*, a sliding device about a flexible member, the proximal end of the flexible member at least in part forming the sliding device, and the portion of the flexible member extending between the distal end and the sliding device traverses through a section of cartilage replacement material at least three times. Hayhurst and Fallin fail to teach or suggest this feature. As shown in FIGS. 19 and 20 of Hayhurst, the suture 118 of the device of Hayhurst passes through tissue 98 only twice. Similarly, as shown in FIGS. 15, 17 and 18, the suture 60 of Fallin passes through meniscus 98 only twice between the purported “slidable device” 88 and distal tip 99. It is noted that although Fallin may show proximal end 84 and retraction line 94 passing through the meniscus 98, neither of proximal end 84 nor retraction line 94 are a portion of the flexible member (suture 60) extending between the distal end mechanically locked to the implant material (distal tip 99) and the sliding device (slidable device 88),” as claimed.

As stated above, to establish a *prima facie* case of obviousness, one of the basic criteria that must be met is that the prior art reference (or references when combined) must teach or suggest all the claimed limitations. See, *In re Vaeck*. Applicant respectfully submits that a *prima facie* case of obviousness has not been established with respect to independent Claim 35 at least because Hayhurst and Fallin do not teach or suggest that a “portion of the flexible member extending between the distal end and the sliding device traverses through the section of cartilage replacement material at least three times,” as claimed. Further, pending rejected Claims 38, 43, 54 and 55-58 depend, either directly or indirectly, upon independent Claim 35. For at least the reasons presented above in respect to Claim 35, Claims 38, 43, 54 and 55-58 are patentable over Hayhurst and Fallin. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

Independent Claim 46

Independent Claim 46, as amended, recites a surgical device including, *inter alia*, a flexible member and a stopping device, wherein the total length of the flexible member

extending between the stopping device and a first end of the flexible member at an attachment point to a section remains the same both before and after the section of cartilage replacement material is positioned within a defect site. Hayhurst and Fallin fail to teach or suggest this feature.

As discussed above, the Office relies upon Fallin for teaching or suggesting a flexible member threaded twice through an anchor to form at least two pulley mechanisms, and a stopping device about the flexible member. The alleged anchor 56 forming a “slidable/stopping device” 88 of Fallin, however, is **not** configured such that the total length of the suture 60 extending between the purported “sliding/stopping device” 88 and an end of the suture 60 that is mechanically locked to meniscus 98 remains the same both before and after the tear 100 of meniscus 98 is repositioned. It is noted that the end of the suture 60 that is “mechanically locked” to meniscus 98 may be alleged to be knot 90 of anchor 58.

Rather, in direct contrast, the purported “sliding/stopping device” 88 moves along the length of the suture 60 towards anchor 58 and knot 90, as clearly shown by the arrows indicating the movement of the suture 60 and anchor 56/anchor 58 in FIG. 16. Stated differently, the device 20 of Fallin fundamentally operates on the principle that “sliding/stopping device” 88 can be utilized to slide anchor 56 towards anchor 58 to reduce the length of the suture 60 therebetween to remove any slack of the suture 60 so that the suture 60 holds tear 100 sufficiently tightly to ensure healing thereat. See, Column 8, lines 25-32 and FIGS. 17 and 18.

Applicant respectfully submits that a *prima facie* case of obviousness has not been established with respect to independent Claim 46 at least because Hayhurst and Fallin do not teach or suggest a device wherein the total length of the flexible member extending between the stopping device and a first end of the flexible member at an attachment point to a section of cartilage replacement material remains the same both before and after the section is positioned within a defect site, as claimed. Further, pending rejected Claims 47, 49 and 60 depend, either directly or indirectly, upon independent Claim 46. For at least the reasons presented above in respect to Claim 46, Claims 47, 49 and 60 are patentable over Hayhurst and Fallin. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

New Independent Claim 76

New independent Claim 76 has been added and is substantially similar to independent Claim 1, except that it does not include the novel and non-obvious feature described above under the heading “Independent Claim 35.” Instead, independent Claim 76 recites that the biocompatible anchor of the device is positioned proximate a first side of the section of cartilage replacement material, the sliding device about the flexible member is formed at least in part by the proximal end of the flexible member, and the sliding device is positioned proximate a second side of the section of cartilage replacement material that substantially opposes the first side of the section. Hayhurst and Fallin fail to teach or suggest this feature.

As discussed above, the Office relies upon Fallin for teaching or suggesting a flexible member passed through an anchor at least twice to form at least two pulley mechanisms, and a sliding device about the flexible member. Specifically, the configuration of the suture 60 and anchor 58 shown in Figure 7 is purported to teach or suggest the anchor that forms “at least two pulley mechanisms,” as well as the “sliding device” 88 purported to correspond to the sliding device about the flexible member. This configuration of Fallin, however, does not include an anchor positioned proximate a first side of a section of cartilage replacement material and a sliding device positioned proximate a second side of the section that substantially opposes the first side of the section, as claimed.

Rather, in direct contrast, anchor 56 (which is the purported anchor that forms “at least two pulley mechanisms”) is on the same side of the meniscus 98 as the “sliding device” 88, as shown in FIGS. 17 and 18, because the “sliding device” 88 is inherently formed in part by anchor 56. Certainly, Fallin fails to teach or suggest an anchor forming at least two pulley mechanisms on an **opposing side** of a section of cartilage replacement material as compared to a sliding device. Applicant respectfully submits that a *prima facie* case of obviousness cannot be established with respect to new independent Claim 76 based on Hayhurst and Fallin at least because Hayhurst and Fallin do not teach or suggest a device wherein the anchor forming at least two pulley mechanisms and the sliding device are on opposing sides of the section of cartilage replacement material, as claimed.

Further, the “sliding device” 88 relies on the passageway 68B of the anchor 56 to selectively lock and unlock, i.e., “sliding device” 88 relies on passageway 68B to function as a sliding device. If “sliding device” 88 and anchor 56 were modified such that the “sliding device” 88 and anchor 56 were located on opposing sides of meniscus 96, “sliding device” 88 would be

prevented from accessing passageway 68B and thereby fail to properly provide selective locking and unlocking of the device. As a result, a modification of the Fallin device which would result in an anchor forming at least two pulley mechanisms and a sliding device being located on opposing sides of a section of cartilage replacement material would impermissibly render the Fallin device unsatisfactory for its intended purpose. See MPEP § 2143.01 (“If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)”). For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new independent Claim 76 based on Hayhurst and Fallin.

Further, new Claims 77-83 depend, either directly or indirectly, upon independent Claim 76. For at least the reasons presented above in respect to Claim 76, Claims 77-83 are patentable over Hayhurst and Fallin. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

New Dependent Claims 62-75 and 77-83

New dependent Claims 62-75 and 77-83 are dependent upon independent Claims 36, 46 or 76. For at least the reasons presented above in respect to independent Claims 35, 46 and 76, as amended, Claims 62-75 and 77-83 are patentable over the cited art. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

New dependent Claims 62-75 and 77-83 are further patentable over the cited prior art for introducing additional subject matter that is not taught or suggested by the cited prior art. For example, Claims 63, 71 and 78 recite that each of the at least two pulley mechanisms include two member portions of the flexible member extending from the anchor, and at least one member portion of one pulley mechanism traverses the cartilage replacement material, and both member portions of the other pulley mechanism traverse the cartilage replacement material. In Fallin, which is relied upon for teaching or suggesting an anchor that forms at least two pulley mechanisms, the two member portions of the suture 60 extending from each “pulley” do not traverse meniscus 98. Specifically, one pulley is purported to be formed from suture 60 passing through passageways 68A and 68B, and a second pulley is purported to be formed from suture

60 passing through passageways 68B and 68C. Only one member portion of suture 60 extending from the pulley mechanism formed by passageways 68A and 68B traverses through meniscus 98 (the portion of suture 60 that extends between anchor 56 and anchor 58), and only one member portion of suture 60 extending from the pulley mechanism formed by passageways 68B and 68A traverses through meniscus 98 (proximal end 84). Stated differently, only one member portion of each “pulley mechanism” of Fallin traverses the meniscus 98 (the portion of suture 60 that extends between anchor 56 and anchor 58, and the proximal end 84 of suture 60). For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new dependent Claims 63, 71 and 78 based on Hayhurst and Fallin.

Further, as noted above, loop 88, which includes the other of the two member portions of the “pulley mechanisms” of Fallin (the other member portions corresponding to the member portion of suture 60 that extends between anchor 56 and anchor 58 for the pulley defined by passageways 68A and 68B, and to the member portion of the proximal end 84 of the suture 60 for the pulley defined by passageways 68B and 68C), cannot properly traverse meniscus 98 – because such an arrangement would impermissibly prevent the loop 88 from engaging passageway 88B and thereby prevent loop 88 from acting as a “sliding device” to selectively lock and unlock the anchor 56 (loop 88 would be stuck on the meniscus 96). See MPEP § 2143.01 (“If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)”). For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new dependent Claim 63, 71 and 78 based on Hayhurst and Fallin.

As another example, Claims 65, 72 and 79 recite that the at least two pulley mechanisms also form at least one loop between two adjacent pulley mechanisms, and the sliding/stopping device is formed about the at least one loop. As noted above, loop 88 is formed between the pulley formed by the suture 60 passing through passageways 68A and 68B and the pulley formed by the suture 60 passing through by passageways 68B and 68C. As shown clearly in FIG. 7, the proximal end 84 of the suture 60 of Fallin passes **through** the loop 88, to thereby form the purported “sliding/stopping device” 88. Therefore, Fallin fails to teach or suggest a sliding device **about** a loop formed between two pulley mechanisms, as claimed. For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new dependent Claims 65, 72 and 79 based on Hayhurst and Fallin.

Further, the device 20 of Fallin fundamentally relies on the proximal end 94 of the suture 60 being passed **through** loop 88, as opposed to **about** loop 88, as claimed. Passageway 68B is sized and shaped such that only two portions of suture 60 can pass through the passageway at the same time. In this manner, by the proximal end 94 of the suture 60 being passed **through** loop 88, loop 88 and proximal end 94 become jammed into passageway 68B to selectively lock the position of anchor 56, to thereby form the purported “sliding/stopping device” 88. See, Column 6, lines 41-56. As a result, if Fallin were modified such that proximal end 94 were formed **about** loop 88, as claimed, the loop 88 would pass through passageway 68B and the “sliding/stopping device” 88 would not be formed and the device 20 would not be capable of selectively locking and unlocking the position of the anchor 56 along suture 60. See MPEP § 2143.01 (“If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)”). For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new dependent Claim 65, 72 and 79 based on Hayhurst and Fallin.

As yet another example, Claims 66, 73 and 80 recite that the threading of the flexible member through the anchor at least twice to form at least two pulley mechanisms also forms at least one loop between two adjacent pulley mechanisms, and the at least one loop is **enlarged** to locate and **retain** the section of cartilage replacement material in the defect site. As described above, the device 20 of Fallin functions by the proximal end 94 of the suture 60 being passed through loop 88 so that proximal end 94 and loop 88 become wedged or jammed into passageway 68B to selectively lock the position of anchor 56. Thus, in direct contrast to the claimed feature, when the device 20 of Fallin is “locked” in a position that properly closes the tear 100 of the meniscus, the free end 92 of the suture 60 is tensioned and the size of loop 88 is **reduced** to **retain** the tear 100 in the closed position (so that the proximal end of the suture 60 and the loop 88 is pulled into passageway 88B and wedged therein to lock the position of anchor 56). See, Column 6, lines 41-56 and FIGS. 15-18. Therefore, Fallin fails to teach or suggest a loop that is enlarged to locate and retain a section of cartilage replacement material in the defect site, as claimed. For this additional reason, a *prima facie* case of obviousness cannot be established with respect to new dependent Claims 66, 73 and 80 based on Hayhurst and Fallin.

As another example, Claims 67, 74 and 81 recite that the sliding/stopping device is located at the proximal end of the flexible member both before and after the section of cartilage

replacement material is located and retained in the defect site. As discussed above, the claimed “sliding/stopping device” 88 is purported to be loop 88, including the interaction of passageway 88B and proximal end 84 with loop 88. As also explained above, the device 20 of Fallin fundamentally operates based on the principle that the “sliding/stopping device” 88 can be utilized to **slide** anchor 56 towards anchor 58 to **reduce the total length of the suture 60 therebetween** to remove any slack of the suture 60 so that the suture 60 holds tear 100 sufficiently tightly to ensure healing thereat. See, Column 8, lines 25-32 and FIGS. 17 and 18. As such, the anchor 56 of Fallin is not located at a “proximal end” of the suture 60 **both before and after** the tear 100 is closed. Rather, in direct contrast, the anchor 56 of Fallin slides along suture 60. The “sliding/stopping device” 88 is therefore not located at a “proximal end” of the suture 60 before and after the tear it tightly closed. Further, the purported “sliding/stopping device” 88 is never truly positioned at a “proximal end” of suture 60. As clearly shown in FIG. 7, the “sliding/stopping device” 88 is located along a **medial portion** of suture 60, and the free end 92 of the suture 60 is located past the anchor 56. As shown in FIG. 15, the free end 92 does not include “sliding/stopping device” 88 and is instead manually tensioned to slide the anchor 56 along suture 60 and to “lock” the purported “sliding device” 88. As a result, Fallin fails to teach or suggest a loop that is enlarged to locate and retain a section of cartilage replacement material in the defect site, as claimed. For these additional reasons, a *prima facie* case of obviousness cannot be established with respect to new dependent Claims 67, 74 and 81 based on Hayhurst and Fallin.

Rejections Under 35 U.S.C. §103(a) Over Hayhurst in View of Fallin, and in Further View of Binette

Claims 39-41 and 51-53 stand rejected under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of Binette. Claim 53 has been canceled herein, and therefore the rejection to Claim 53 has been rendered moot. Claims 39-41, 51 and 52 depend, either directly or indirectly, upon independent Claim 35, as amended. The Applicant submits that Binette does not materially add to the teachings of Hayhurst and Fallin in such a manner that cures the above-noted deficiencies of Hayhurst and Fallin. For at least the reasons presented above in respect to independent Claim 35, as amended, Claims 39-41, 51 and 52 are patentable over Hayhurst in view of Fallin, and in further view of Binette. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

As such, the rejections of Claims 39-41 and 51-53 under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of Binette, have been overcome or rendered moot. Accordingly, the Applicant respectfully requests that the rejections of Claims 39-41 and 51-53 be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §103(a) Over Hayhurst in View of Fallin, and in Further View of Wolf

Claim 42 stands rejected under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of Wolf. Claim 42 directly depends upon independent Claim 35, as amended. The Applicant submits that Wolf does not materially add to the teachings of Hayhurst and Fallin in such a manner that cures the above-noted deficiencies of Hayhurst and Fallin. For at least the reasons presented above in respect to independent Claim 35, as amended, Claim 42 is patentable over Hayhurst in view of Fallin, and in further view of Wolf. See MPEP § 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) (claims depending from a patentable claim are also patentable over the prior art).

As such, the rejection of Claim 42 under 35 U.S.C. §103(a) based on the teachings of Hayhurst in view of Fallin, and in further view of Binette, has been overcome. Accordingly, the Applicant respectfully requests that the rejection of Claim 42 be reconsidered and withdrawn.

CONCLUSION

In view of the foregoing, the Applicant submits that none of the claims now pending in the application is obvious under the provisions of 35 U.S.C. §103. Consequently, the Applicant believes that each of the claims now pending in the application is presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Office believes that any unresolved issues exist or if, in the opinion of the Office, a telephone conference would expedite passing the present application to issue, the Office is invited to call the undersigned attorney at 518-452-5600 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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